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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,168	12/22/2003	Ulrich Schiestl	DT-6691	7758

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EXAMINER

LOPEZ, MICHELLE

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,168

Applicant(s)

SCHIESTL ET AL.

Examiner

Michelle Lopez

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7 and 9-11 is/are rejected.
- 7) ☒ Claim(s) 4-5, 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendment filed on April 29, 2005.
2. The terminal disclaimer filed on April 29, 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Patent No. 6,722,548 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, it is not clear what is meant by an “electrical actor”. Does it mean an “electrical actuator”?

In claims 10-11, it is not clear what is meant by “fuel expression movement”. Does the “fuel expression movement” means a movement of the displacement member between a starting position into an end position, wherein a quantity of fuel corresponding to a displacement volume is supplied to a combustion chamber?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 6-7, 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Veldman (5,00,128) in view of Achten (6,279,517).

With respect to claim 1, Veldman discloses an internal combustion driven setting tool for driving fastener elements comprising a fuel source 5 with a fuel feed line from the fuel source to a combustion chamber 2 and having at least one dosing device 31 arranged between the fuel source 5 and the combustion chamber 2, wherein the dosing device 31 comprises a displacement body 32 arranged in a chamber 30, and wherein the displacement body 32 has displacement volume that is adjustable due pressure changes within the chamber 30, but does not specifically disclose that the displacement body is arranged in the chamber for forcing fuel out of the chamber.

However, Achten discloses a dosing device 18 having a pump chamber 26 and a displacement member 22 within the pump chamber for the purpose of forcing fuel out of the chamber through to a combustion chamber. In view of Achten, it would have been obvious to one having ordinary skill in the art to have provided a dosing device having a pump chamber and a displacement member within the pump chamber in order to force fuel out of the chamber through to a combustion chamber

With respect to claim 2, Veldman discloses wherein the displacement volume of the displacement body 32 is adjustable via a control device 41,42.

With respect to claim 3, it is deemed that the displacement body 32 is adjustable using a manually operated setting means via 43.

With respect to claim 6, Veldman discloses wherein the chamber 30 has an inlet and an outlet and wherein valves 41,42 are arranged at the inlet and the outlet of the chamber 30 that make fuel transport possible only in the direction towards the combustion chamber 2.

With respect to claim 7, Achten also discloses wherein the displacement body is a piston 22 that is displaceable guided in a chamber 26 and includes a piston stroke that defines the displacement volume for the purpose of forcing fuel out of the chamber.

With respect to claim 9, Veldman as modified by Achten does not disclose wherein the displacement body is actuated by an electrical actuator.

However, it would have been an obvious matter of design choice to have provided an electrical actuator instead of hydraulic actuators, since applicant has not disclosed that an electrical actuator solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with hydraulic actuators activating a displacement body for the purpose of dosing or controlling a flow of fluid to a combustion chamber.

With respect to claim 10, Veldman discloses wherein the displacement body can be mechanically actuated using an actuation means 22.

With respect to claim 11, Veldman discloses wherein the displacement body is excited using the control device 41,42.

Allowable Subject Matter

5. Claims 4-5 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

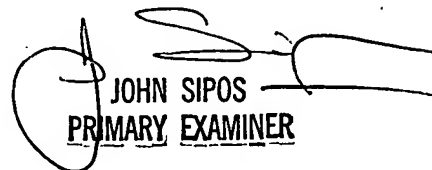
Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML


JOHN SIPOS
PRIMARY EXAMINER